

CAS 2010/A/2172 Mr Oleg Oriekhov v/ UEFA

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

Sitting in the following composition:

President: The Hon. Michael **Beloff**, QC, barrister in London, England

Arbitrators: Mr Denis **Oswald**, attorney-at-law, Peseux, Switzerland  
Mr José Juan **Pintó**, attorney at law, Barcelona, Spain

Ad hoc Clerk: Mr Patrick **Grandjean**, attorney-at-law, Lausanne, Switzerland

in the arbitration between

Mr Oleg Oriekhov, Kiev, Ukraine

Represented by Mr Ievgenii **Tkachenko** and Ms Kateryna **Fomytska**, Ukraine

the Appellant

and

Union des Associations Européennes de Football (UEFA), Nyon, Switzerland

Represented by the attorneys-at-law Mr Jean-Samuel **Leuba**, Lausanne, Switzerland and  
Mr Michael **Noth**, Zürich, Switzerland

the Respondent

\* \* \* \* \*

## **INTRODUCTION**

This appeal is brought by a referee against a finding of involvement in match fixing and the sanction imposed upon him. It is the first case of its kind in European football involving a match official as distinct from a player or coach. It therefore has an importance beyond that to the disputant parties.

### **I. PARTIES**

1. Mr Oleg Oriekhov (hereinafter the "Appellant"), born on 20 August 1967, is of Ukrainian nationality. Until the beginning of 2010, he was regularly appointed to officiate matches as a UEFA Category 2 Referee and was the head of the Youth Committee of the Football Federation of Ukraine (hereinafter "FFU"), where he had worked for the past 16 years until the events hereinafter described..
2. The Union des Associations Européennes de Football (hereinafter "UEFA" or the "Respondent"), is an association incorporated under Swiss laws with its headquarters in Nyon, Switzerland. UEFA is the governing body of European football, dealing with all questions relating to European football and exercising regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players of the European continent.

### **II. BACKGROUND FACTS**

#### **II.1 THE MATCH**

3. On Thursday 5 November 2009, in Basel, Switzerland, the Appellant officiated a match between FC Basel 1893 and PFC CSKA Sofia in the Group Stage E of the 2009/2010 UEFA Europa League.
4. FC Basel 1893 won by the score of 3 to 1. The home team scored twice during the first half and each team scored once during the second half. FC Basel 1893 scored its second goal by a penalty awarded after 41 minutes of play.

#### **II.2 THE POLICE INVESTIGATIONS**

5. The Public Prosecutor of Bochum, Germany, conducted widespread criminal investigations into possible fraud related to match fixing and illegal gambling. It brought to light the existence of regular meetings between gambling syndicates connected to organized crime groups. In that context, several suspects were put under surveillance and their telephone conversations were intercepted.
6. Among the persons whose telephone was tapped, were Mr Ante Sapina, his brother Filip, Mr Marijo Cvrtak, his brother Josip, Mr Alex Kranz (alias Alik), Mr Roman Jatsinischyn and Mr Tuna Akbulut.
7. The transcripts of the telephone recordings as well as their translation into English were filed in the present proceedings and were equally available to the Appellant, the UEFA

and the members of the Panel. Their content and the accuracy of their translation were not disputed. The following matters are evidenced thereby.

- Conversation between Mr Ante Sapina and Mr Marijo Cvrtak on 29 October 2009, at 15:11: Mr Ante Sapina explains that he is about to meet a 39-year old referee, who is "*category 2 or 3*" and who is about to officiate a match the following Thursday. Mr Ante Sapina requests Mr Marijo Cvrtak to ascertain the exact category of the referee in question, in order to adapt the match-fixing offer.
- Conversation between the Cvrtak brothers on 29 October 2009, at 15:16: Mr Marijo Cvrtak asks his brother, Josip, to do some research on the Internet regarding a 39-year old Ukrainian referee, who would officiate in a "*UEFA cup match*" the following Thursday in Switzerland. After a few minutes, Josip confirms that the referee is Ukrainian and "*category 2*".
- Conversation between Mr Roman Jatsinischyn and Mr Alex Kranz on 2 November 2009, at 17:46: Mr Roman Jatsinischyn recently met and talked to a person, who told him that "*everything's in order; he has spoken with the team*". According to Mr Roman Jatsinischyn, the person in question "*won't let anyone down, the match is in Switzerland and that's quite a thing*". From that conversation, it can be inferred that the bribe to be paid amounts EUR 50,000. In this regard, Alik expresses his concern over the method of payment as he cannot cross the border with more than EUR 10,000 in cash, due to customs restrictions. The two men decide to circumvent the problem by breaking the bribe into smaller sums to be carried by several accomplices and to be remitted to Mr Roman Jatsinischyn on behalf of the person in question. Both agree that it is necessary for the bribe to be paid with no delay in order to avoid mistrust between the parties involved.
- Conversation between Mr Ante Sapina, an unidentified person and Mr Alex Kranz on 3 November 2009, at 18:30: The discussion evolves around the ideal moment and number of goals to be scored in order to increase the opportunities for profit and to induce the other gamblers to place bets. "*If we know HIM for a bit longer, you say to HIM: Listen! If you can somehow ensure that the home team wins by two goals in the second half. Only the second half... Do you understand? And you can bet on that, (...).*"
- Conversation between Mr Marijo Cvrtak and Mr Tuna Akbulut on 4 November 2009, at 03:21: "*It is for Thursday. They only had to take the money there, to a Russian, because of the Basel match (...) but the odds are falling, but that might not matter. Tuna does not need this match in his handicap. They will only bet on the number of goals.*" Mr Marijo Cvrtak confirms that he met the Ukrainian referee and "*took him the money for Thursday. They are betting in the number of goals in the 2<sup>nd</sup> half, but he (the referee) needs three goals and there will be one goal in the first half and two in the second half. So the odds are good for betting on the number of goals.*"
- Conversation between Mr Ante Sapina and his brother Filip on 5 November 2009, at 00:53: They question their accomplices' reliability and discuss the possibility of a

last-minute cancellation of the deal on the part of the referee. *"Ante has met the referee and spoken with him. However, HE didn't say OK on that occasion, that's the point"*. On two occasions there is mention of the name of "Oriechov" and "Oriehov"

- Conversation between Mr Ante Sapina and Mr Marijo Cvrtak on 5 November 2009, at 19:49: The conversation takes place during the half-time of the match between FC Basel 1893 and PFC CSKA Sofia. The two men comment the game, the refereeing and the number of goals (*"there must be (a goal) some time. If it's 3-0 ...It is still not very much"*).
- Conversation between Mr Alex Kranz and Mr Roman Jatsinischyn on 5 November 2009, at 20:33: Mr Alex Kranz complains about the referee, who partially departed from what was agreed and *"wrongly gave a penalty before the second half. He shouldn't have given it because after that he had no more breathing space to give two more"*. Furthermore, he is of the opinion that the referee did not have to intervene as the situation sorted out itself. In any event, Mr Alex Kranz and Mr Roman Jatsinischyn agree that everything turned out well, and that *"Everyone is happy, everyone has earned some money and now he'll come and get his money and [Alik will] have him in [his] pocket"*.
- Conversation between Mr Alex Kranz and Mr Roman Jatsinischyn on 9 November 2009, at 17:24: Mr Alex Kranz asks Mr Roman Jatsinischyn to make the necessary arrangements for him and Mr Ante Sapina to meet "Oleg" and another person the following day. Mr Roman Jatsinischyn makes clear that only "Orehov" will attend the said meeting and warns Mr Kranz not to come *"empty-handed"*.

### **II.3 THE MEETING AT UEFA HEADQUARTERS ON 30 NOVEMBER 2009**

8. On 26 November 2009, Mr Peter Limacher, UEFA's Head of disciplinary services, notified in writing the Appellant to appear at the UEFA headquarters on 30 November 2009. The Appellant was informed that he was to be heard on *"highly urgent matters"* and was required to keep the communication confidential.
9. In emails dated 27 October 2009, the Appellant asked Mr Peter Limacher what the meeting was about and whether there was a connection between the said meeting and the cancellation of his assignment to officiate a match in Austria on 16 December 2009.
10. The same day, Mr Peter Limacher answered the Appellant as follows:

*"We want to discuss with you about some matches you refereed for UEFA with the objective to understand the dynamics involved prior and after the match, in particular with regard to certain individuals who might have contacted you. The communication from the referee's unit is the usual procedure in cases where we contact a referee in matters of integrity. Needless to say that we expect your full cooperation in this issue. It is most essential that we can clarify certain things by the beginning of next week. It will also help appointing you in the near future."*

11. On 30 November 2009, the Appellant was questioned by Mr Peter Limacher and Mr Rudolf Stinner at the UEFA premises in Nyon, Switzerland. The parties were assisted by two interpreters, Ms Valeria Döhler and Mr Dimitri Boulakovski. According to its minutes, the meeting lasted from 9:30 to 11:00.
12. The minutes of the meeting indicate the following:
  - The Appellant was informed of his rights prior to the questioning. He claimed that he had no contact with the German criminal organisation involved in the illegal betting and match-fixing scandal in Europe. However, he admitted that he *"had been contacted approximately prior to the UEL match FC Basel - CSKA Sofia by a person called ROMAN, (R) who he had known for 10 years. (...) R asked him whether he was interested in meeting some people. R wanted [him] to meet them. Even afterwards R contacted [the Appellant] to know more about his UEFA appointments, and [the Appellant] informed him that he was appointed for the UEL match in Basel.*
  - *"Approximately one month ago, but after his match in Basel, Roman introduced two gentlemen to [the Appellant]. Both gentlemen appeared to be involved in sports betting. (...) [The Appellant] was asked to manipulate certain matches, which he refused, stating that his career was too important to him. The two gentlemen told him that he would be a millionaire in 2-3 years from now by manipulating certain games.*
  - *"[The Appellant] stated that [Roman] contacted him several times to persuade him to manipulate certain matches (after reading the draft of the minutes, [the Appellant] indicated here that [Roman] asked him several times whether he was not ready to manipulate a game)."*
  - *"Asked why he had not reported these contacts to UEFA, [the Appellant] declared that he did not consider this to be important, as the approach was not specific enough. Moreover, his command of English would not be sufficient to inform UEFA. [He] also stated that he did not know whom to inform at UEFA. (...) [The Appellant] also indicated that he was reluctant in releasing information of the conversations, because he was afraid for his family."*
  - The Appellant admitted that he should have reported to the UEFA the contacts he had regarding match manipulation but disputed that he had either been offered or received money for the match played in Basel on 5 November 2009.
13. At the hearing before the Court of Arbitration for Sport, the Appellant claimed that the meeting of 30 November 2009 actually lasted the whole day, until 18h30. He claimed further that he signed the original minutes at 16:30 assuming that his remarks and disagreements with the draft would be recorded subsequently. This version of the facts is not corroborated by the evidence given by Ms Döhler and Mr Boulakovsky, who recalled that the meeting lasted about an hour and went smoothly.

#### II.4 THE MINUTES OF MR ANTE SAPINA'S INTERROGATION BY THE GERMAN POLICE

14. On 23 August 2010, Mr Ante Sapina was held in Germany awaiting trial and was interrogated by the police of Bochum, Germany. The transcript of his interrogation reads in so far as relevant as follows, :

" *[Mr Ante Sapina's brother] Filip and his contact flew to Ukraine in order to meet a middleman there. Filip's contact is Alexej Kranz, who lives in Berlin. I also know him personally. The middleman in Ukraine is called Roman. (...)*

*Filip and Kranz then came back and had agreed with Roman that he would let them know if he had anything concrete.*

*It was around the middle of October 2009 when Filip contacted me and said that Roman had been in touch from Ukraine, saying that he had a referee in Ukraine. It was the referee Oleg Oriekhov and it concerned the Europa League match, Basel v Sofia (...). The match took place in Basel on 5.11.2009.*

*I discovered by searching the Internet that Oriekhov was a category 2 referee and that he would be refereeing some good matches.*

*I then flew with Kranz to Ukraine in order to meet Roman and, later on, Oriekhov. The meeting took place around the end of October 2009.*

*So it was in Ukraine that we first met Roman. Roman told us, that he had spoken to Oriekhov, but things were not quite as I had imagined.*

*Roman suggested that I should try to persuade him to fix a match by promising to get him promoted to a higher UEFA category.*

*We had already talked about bribe money at that point. The final sum was €30,000 or €40,000, I can't remember exactly how much it was. This sum included the money for Roman.*

*When we met Oriekhov the following day, Kranz and Roman were both there. (...). We met in a restaurant in Kyiv.(...) In our conversation, I told Oriekhov that I could ensure that he would be promoted to a higher category. He said that was of no interest to him because he was too old.*

*It was very difficult. During the conversation, I then asked Oriekhov to ensure that at least two goals were scored in the second half. I promised him €30,000 or €40,000 for it. Again, Oriekhov showed no sign of accepting the offer. Instead, he wanted to speak to Roman. I could not understand what they said because they spoke in Russian. A short time later, everyone stood up and the meeting was over. (...)*

*About a week before the match, Kranz or Filip told me that Roman called from Ukraine and said that Oriekhov had accepted the offer. He meant the offer concerning at least two goals in the second half.*

*I sat down with Kranz and Filip and arranged with them that they would fly to Ukraine in order to give Roman the bribe money. Roman should then give it to Oriekhov. For legal reasons, we agreed that the money should be taken to Ukraine by three different people, in order to avoid any problems at customs. It was decided that Rony Kranz, the son of Alexej Kranz, should take some of the money to Ukraine.*

*About two or three days before the day of the match, if my memory serves me right, Filip and Alexej Kranz flew to Ukraine first, each taking some of the bribe money with them. A short time later, Rony Kranz flew with his share, Alexej had the largest sum. Filip divided the money between himself and Alexej. I gave Rony the money myself. It was about €10,000."*

## **II.5 RECENT PRESS ACCOUNTS**

15. On 10 December 2010, a public hearing was held before the Criminal Court in Bochum, Germany, regarding betting fraud in international football. According to various press clippings filed before the Court of Arbitration for Sports, one of the defendants accused of involvement in the match fixing scandal, Mr Tuna Akbulut, confirmed that the Appellant had accepted to manipulate a match for a sum amounting EUR 50,000 to EUR 60,000.

## **II.6 THE PROCEEDINGS BEFORE THE UEFA**

### Decision of UEFA Control and Disciplinary Body

16. On 18 February 2010 and in accordance with article 32bis of the UEFA Disciplinary Regulations, the Chairman of the UEFA Control and Disciplinary Body provisionally suspended the Appellant from all refereeing activities until a decision was taken on the merits.
17. On 18 March 2010 and after having heard the Appellant and carefully evaluated the available evidence, the UEFA Control and Disciplinary Body decided the following:
  - "1. Mr Oleg Oriekhov, international referee, is banned for life from exercising any football related activities.*
  - 2. FIFA will be requested to extend the present decision so as to give it worldwide effect."*
18. On 30 March 2010, the Chairman of the FIFA Disciplinary Committee decided to extend the ban on the Appellant to have a worldwide effect. He specified that his decision was contingent on the outcome of any possible appeal.

### Decision of the UEFA Appeals Body

19. The Appellant lodged a timely appeal against the decision of the UEFA Control and Disciplinary Body with the UEFA Appeals Body.

20. On 18 May 2010, the UEFA Appeals Body held that there was sufficient evidence of repeated contacts between the Appellant and members of a criminal group involved in betting fraud. It concluded accordingly that the Appellant violated the principles of conduct and the duty of disclosure of illicit approaches prescribed by the applicable regulations in failing immediately to report to UEFA that he had been in receipt of offers by certain individuals to take an active part in their match-fixing scheme. It considered the offence committed by the Appellant to be extremely serious as he "*did not hesitate to endanger the very essence of football, which relies on matches taking place in a spirit of loyalty, integrity and sportsmanship, free of all constraints except the Laws of the Game*". As a consequence, the UEFA Appeals Body concluded that a life ban on exercising any football-related activity was the appropriate sanction to be imposed upon the Appellant and, hence, upheld the decision of the Control and Disciplinary Body.
21. On 8 July 2010, the Appellant was notified of the reasoned decision issued by the UEFA Appeals Body (hereinafter the "Appealed Decision").

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

#### **III.1 THE APPEAL**

22. On 17 July 2010, the Appellant filed a statement of appeal with the Court Of Arbitration for Sport (hereinafter "CAS"). He challenged the Appealed Decision submitting the following request for relief:

*"Therefore the Appellant is asking you:*

- 1. To replace the decision of the UEFA Control and Disciplinary Body dated 18 May 2010 and to annul the disciplinary measures against the Appellant, Oleg Oriekhov.*
- 2. To impose the costs of the UEFA appeal proceedings in the amount of EUR 8,000 on the Respondent, UEFA.*
- 3. To impose the costs of the Arbitral Proceeding before the CAS on the Respondent, UEFA."*

23. On 27 July 2010, the Appellant filed his appeal brief. This document contains a statement of the facts and legal arguments accompanied by supporting documents.
24. The Appellant's submission, in essence, may be summarized as follows:
- The Appellant did not have any motive to participate in any betting fraud. His earnings coupled with those of his wife's are sufficient to allow him and his family to live a comfortable life in Ukraine without involvement in corruption. Furthermore he has an unblemished disciplinary record and enjoys an outstanding reputation with high refereeing qualifications and recognition as one of the best referees in Ukraine.



- The charges held against the Appellant rely on untrue statements made during intercepted telephone conversation to which he was not a party. Contrary to the evidence seemingly set out in the transcripts and audio recordings, the Appellant has not been in a position to meet with, and even less to cooperate in the criminal activity of Mr Ante Sapina and/or of the latter's accomplices before the match in Basel. On the dates when he allegedly met with Mr Ante Sapina, i.e. 29 or 30 October 2009, he spent the whole day either working at his FFU office as established by several alibi witnesses or on a business trip. The fact that his name was eventually mentioned during the telephone conversations can be explained by the fact that his personal data, his telephone and fax numbers or information about his working conditions can be easily found on the Internet and hence can be used without his knowledge or consent.
- According to the Appellant, the only contact he had with anyone was after the relevant match. On that occasion, he was introduced to two men but immediately halted the conversation when they suggested that he could earn quick money by participating in their activity. He did not disclose the existence of this meeting to the UEFA because a) he considered it as too trivial, b) his command of English was not up to the task, c) he did not know whom to report to and d) he feared for his family's safety. Furthermore, he kept silent to avoid the fate of all the other Ukrainian referees who reported a suspicion of corruption to UEFA with no result other than damage to their careers and detriment to their lives.
- The minutes of the meeting at UEFA headquarters on 30 November 2009 are incorrect as they suggest that he had several contacts with Mr Roman Jatsinischyn concerning his possible cooperation in organized match manipulation. What he actually said during the meeting, was that Mr Roman Jatsinischyn was merely an acquaintance and that he talked to him on several occasions, only when he ran into him by chance. Moreover and contrary to what is recorded in the said minutes, he never talked to Mr Roman Jatsinischyn about match fixing before the game in Basel.
- *"It's more likely, that Roman, one of the participants of the telephone conversations, used the name and personal relation with the Appellant, without his awareness and behind his back made a fraud trying to receive a profit"*. Roman is not the Appellant's friend and has never acted on his behalf, in so far as Roman had contacts with members of a criminal organisation or collected the bribe money.
- Until the meeting at the UEFA headquarters on 30 November 2009, the Appellant was not aware of the fact that some dishonest persons had planned to manipulate the match played in Basel. He had assumed that the purpose of the said meeting was to review his progress as a referee and to discuss his promotion to a higher category.
- According to the UEFA Referee Observer Report, the overall evaluation given to him for the match in Basel was 7.9, which is too high to be compatible with the manipulation of a match.

### III.2 THE ANSWER

25. On 30 August 2010, UEFA submitted its answer, with the following request for relief:

*"Based on the above, UEFA requests that the Panel of the Court of Arbitration for Sport pronounce:*

- I. The Appeal filed by Oleg Oriekhov against the judgment rendered on 18 May 2010 by the UEFA Appeals Body is rejected.*
- II. The Judgment rendered by the UEFA Appeals Body on 18 May 2010 is confirmed.*
- III. The costs of the arbitration procedure are to be borne by the Appellant Oleg Oriekhov.*
- IV. Oleg Oriekhov is to be ordered to pay as participation in the costs of UEFA an amount of money to be determined by the CAS Arbitration Panel."*

26. The Respondent's submission, in essence, may be summarized as follows:

- The facts of the case are substantiated by concrete evidence from multiple sources:
  - The transcripts of the telephone recordings. This evidence is particularly credible as the interlocutors were not aware of being under surveillance. Hence, there is no reason to believe that they did not mean what there were saying. Furthermore, the transcripts constitute an accurate record of the conversations, and are much more reliable than testimonies based on recollections.
  - The minutes of the meeting at the UEFA headquarters on 30 November 2009, signed by the Appellant.
  - The minutes of Mr Ante Sapina's interrogation by the Bochum police on 23 August 2010.
  - Recent press accounts.
- There is clear evidence that there were numerous direct and indirect contacts between the Appellant and members of a criminal group involved in match fixing. The focus of such match fixing was on the match between FC Basel 1893 and PFC CSKA Sofia, which took place on 5 November 2009.
- In the present case, it has been established that the Appellant met those members in person both before and after the said match.
- *"Even if one should consider that Oleg Oriekhov did not need to influence the match, by his attitude and behaviour, he clearly violated article 5 DR. By accepting to talk to persons wishing to engage in match-fixing and by passing with them an agreement through which he would receive money, the Appellant clearly violated article 5(1) DR. The mere fact that he was approached by persons wishing to manipulate a match and to not have informed UEFA is already a*

*disciplinary violation according to article 5 DR. It also constitutes a violation of the "General terms and conditions for referees."*

- In view of the gravity of the offence committed by the Appellant, the sanction imposed upon him is just and proportionate.

### **III.3 THE CONSTITUTION OF THE PANEL**

27. On 29 September 2010, the CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: The Hon. Michael Beloff QC, President of the Panel, Mr Denis Oswald, arbitrator designated by the Appellant and Mr José Juan Pintó, arbitrator nominated by the UEFA.

### **III.4 HEARING**

28. A hearing was held on 15 December 2010 at the CAS premises in Lausanne, Switzerland. All the members of the Panel were present. The parties did not raise any objection as to the constitution and composition of the Panel.

29. The following persons attended the hearing:

- For the Appellant, himself and his counsels, Mr Ievgenii Tkachenko and Ms Kateryna Fomitskaya.
- For the UEFA, its legal counsel, Mr Veron Mosengo-Omba, assisted by Mr Jean-Samuel Leuba, Mr Michael Noth and Mr Philippe Fuchs, attorneys.

30. The Panel heard evidence from the following witnesses:

- Mr A.;
- Mr B.;
- Mr C.;
- Ms Valeria Döhler;
- Mr Dimitri Boulakovski.

31. Ms Valeria Döhler and Mr Dimitri Boulakovski were heard via teleconference, with the agreement of the Panel and pursuant to article R44.2 par. 4 of the Code of Sports-related Arbitration (hereinafter referred to as the "CAS Code").

32. Each witness was invited by the President of the Panel to tell the truth subject to the consequences provided by the law. Each witness was examined and cross-examined by the parties and questioned by the Panel.

33. The Panel heard the detailed submissions of the parties. After the parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course. At the conclusion of the hearing, all parties accepted that their rights before the Panel had been fully respected. The Panel reserved its award, which takes

account of all the arguments and material admitted before it including, but not restricted to, those summarised above.

#### **IV DISCUSSION**

##### **IV.1 CAS JURISDICTION**

34. The decision of the UEFA Appeals Body is a final decision of an internal body of the UEFA. The jurisdiction of CAS, which is not disputed, derives from articles 62 ff. of the UEFA Statutes, article 66 of the UEFA Disciplinary Regulations and article R47 of the CAS Code. It is further confirmed by the order of procedure duly signed by the parties.
35. It follows that CAS has jurisdiction to decide on the present dispute.
36. Under article R57 of the CAS Code, the Panel has the full power to review the facts and the law.

##### **IV.2 APPLICABLE LAW**

37. Article R58 of the CAS Code provides the following:

*"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

38. Pursuant to article 63 paragraph 3 of the UEFA Statutes, "*proceedings before the CAS shall take place in accordance with the Code of Sports-related Arbitration of the CAS*".
39. Article 21.01 of the Regulations of the UEFA Europa League 2009/10 states that "*The provisions of the UEFA Disciplinary Regulations apply for all disciplinary offences committed by clubs, officials, members or other individuals exercising a function at a match on behalf of an association or club, unless the present regulations stipulate otherwise.*"
40. According to article 20.01 of the Regulations of the UEFA Europa League 2009/10, "*The General Terms and Conditions for Referees apply to the referee teams appointed for this competition.*"
41. Articles 13 and 14 of the UEFA General Terms and Conditions for Referees, reads as follows:

##### ***"13. Respect of the rules***

*Referees undertake to apply and respect the applicable Laws of the Game published by FIFA, any related decisions, any and all UEFA's rules, regulations and statutes as well as any and all instructions or circulars issued by the UEFA Referees Committee or UEFA Administration.*

*Any breach by Referees and/or national associations of the current General Terms and Conditions as well as any breach of the UEFA statutes, regulations, directives, decisions, instructions or circulars letters could entail the instigation of proceedings by the Disciplinary authorities of UEFA.*

#### **14. Applicable law and disputes**

*These General Terms and Conditions shall be interpreted and governed in accordance with the laws of Switzerland."*

42. As a result, subject to the primacy of applicable UEFA's Regulations, Swiss law applies complementarily.
43. The disciplinary action taken against the Appellant are related to facts which arose in 2009 and which must be assessed by reference to the UEFA General Terms and Conditions for Referees, Edition 2003, in force since 1 August 2003 and the UEFA Disciplinary Regulations, Edition 2008, in force since 1 July 2008.

#### **IV.3 ADMISSIBILITY**

44. The appeal was filed within the deadline provided by the UEFA Statutes. It complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court Office fee. It follows that the appeal is admissible.

#### **IV.4 PROCEDURAL ISSUE - NEW EVIDENCE**

45. The UEFA produced the following new evidence after the exchange of its original written submissions:
  - The minutes of the interrogation of Mr Ante Sapina by the Bochum police dated 23 August 2010. This document was filed on 9 December 2010 by the UEFA, which alleged that it has been "*made available from the Bochum police (in German) for disclosure only a few days ago. UEFA was, therefore, not in position to produce these minutes when it filed its answer brief on 30 August 2010.*"
  - Press clippings in relation with a public hearing held on Friday 10 December 2010 before the Criminal Court in Bochum. Those documents and their translation into English were filed on Monday 13 December 2010.
46. Article R56 of the CAS Code provides the following:

*"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer."*
47. The new evidence in question could not have been made available any earlier and UEFA disclosed it together with its English translation expeditiously. The circumstances are exceptional in that the new evidence consists of testimony given very recently by the

exactly the same persons whose telephone conversations were intercepted and the transcripts of which were adduced by UEFA against the Appellant. The situation is even more special as those testimonies were obtained either during the evidentiary proceedings ordered by the Public Prosecutor of Bochum or during a public hearing before the Criminal Court in Bochum, i.e. in a context external to the proceedings before the CAS. In other words, this documentary evidence was not prepared with the present dispute in mind.

48. Moreover, the Appellant neither opposed the new evidence produced by the UEFA nor asked for a time extension to review it or comment on it.
49. Under those particular conditions, the production of the submitted evidence was deemed admissible by the President of the Panel.

#### **IV.5 MERITS**

50. The issues to be resolved by the Panel are:
  - a) Has the Appellant committed a disciplinary rule violation?
  - b) What is the correct sanction?
- a) Has the Appellant committed a disciplinary rule violation ?

#### ***In General***

51. Article 5 of the UEFA Disciplinary Regulations provides in so far as relevant as follows:

*"Article 5 Principles of conduct*

- 1 Member associations, clubs, as well as their players, officials and members, shall conduct themselves according to the principles of loyalty, integrity and sportsmanship.*
- 2 For example, a breach of these principles is committed by anyone:*
  - a) who engages in or attempts to engage in active or passive bribery and/or corruption; (...)*
  - d) whose conduct brings the sport of football, and UEFA in particular, into disrepute; (...)*
  - j) who acts in a way that is likely to exert an influence on the progress and/or the result of a match by means of behaviour in breach of the statutory objectives of UEFA with a view to gaining an undue advantage for himself or a third party. (...)*
  - l) who participates directly or indirectly in betting or similar activities relating to UEFA competition matches, or who has a direct or indirect financial interest in such activities.*

52. Article 6 of the General Terms and Conditions for Referees states the following:

*"Referees undertake to behave in a professional and appropriate manner before, during and after their appointment.*

*Referees also undertake not to accept any gifts worth more than CHF 200 (or of an equivalent value) from bodies and/or persons directly and/or indirectly connected with the UEFA matches for which they have been appointed. Match souvenirs such as pennants and replica team shirts are acceptable. Under no circumstances are Referees allowed to keep the match ball(s).*

*Any Referee who is the target or considered to be the target of attempted bribery shall notify UEFA immediately.*

*(...)*

*Referees shall not take part in any betting activities concerning UEFA matches."*

### ***The assessment of the evidence available***

53. As far as the assessment of the available evidence is concerned, the Panel endorses the position articulated in CAS 2009/A/1920 FK Pobeda, Aleksandar Zabrcanec, Nikolce Zdraveski v/ UEFA:

*"Taking into account the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities, the Panel is of the opinion that cases of match fixing should be dealt in line with the CAS constant jurisprudence on disciplinary doping cases. Therefore, the UEFA must establish the relevant facts "to the comfortable satisfaction of the Court having in mind the seriousness of allegation which is made" (CAS 2005/A/908 nr 6.2)."*

54. In the particular case, when assessing the evidence, the Panel has well in mind that corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing.

### ***In casu***

55. The Panel observes that – as far as is relevant - the gap between the Appellant's version of the facts and UEFA's is of limited importance in terms of the outcome of the appeal.

56. The Appellant admits that he was approached by two gentlemen apparently complicit in sports betting and who assured him that he could be a rich man within a very short time. Furthermore, the Appellant does not dispute the fact that the contact was improper and that he did not disclose it to UEFA. Therefore, on his own evidence, he was in breach of his duties under the regulation.

57. In addition, it is common ground that the Appellant was appointed to officiate the match, which took place in Basel on 5 November 2009. The main issue is whether the

Appellant's version of the facts is incomplete and that he was in fact approached *before* the match which took place in Basel on 5 November 2009. This is UEFA's position, supported by transcripts of intercepted telephone conversations, by the minutes of the meeting at UEFA headquarters on 30 November 2009 and by Mr Ante Sapina's statements made during his interrogation on 23 August 2010 and by recent press accounts which, in particular taken together, the Panel found to be convincing evidence.

#### The transcripts of the intercepted telephone conversations

58. The intercepted telephone conversations were about the match played in Basel on 5 November 2009. The protagonists talked about the game before it took place, commented it while it was under progress, and both reviewed the final result and evaluated the Appellant's officiating after it. It is apparent from the said transcripts that Mr Ante Sapina and his accomplices placed bets on the number of goals scored during the match in Basel, because their profit was guaranteed by the fact that they knew in advance the outcome of the game. They declared on several occasions that they had direct and indirect contacts with the Appellant before the match and gathered money to pay for his services, all with a view to ensuring manipulation of the results. The Panel notes, as UEFA submitted, that they had no reason to inculcate the Appellant (who did not ultimately dispute that it was his name that was mentioned) or to speak other than the truth when unconscious of the telephone taps and that what they said was consistent with the statements made by Mr Ante Sapina to the Bochum police.
59. To counter this evidence, the Appellant relied on three alibi witnesses and former colleagues: Mr A., Mr V. and Mr B. who, on 14 May 2010, testified that the Appellant spent the whole day of 29 October 2009 "*at his working place in the building of FFU*". Mr A. however confirmed to the Panel that he actually did not spend the whole day with the Appellant, notably not during the lunch hour and Mr B. expressly stated that he only met the Appellant in the late afternoon. The Panel observes in any event that although those three witnesses purported to remember an unremarkable day at work several months later, it would have found it hard to credit the accuracy of their recollection had it in fact purported to exclude the possibility of any contact between the Appellant and Mr Ante Sapina and/or his accomplices during the 29 October 2009. The Panel does not find that the alibi evidence excludes such possibility.
60. The Appellant laid emphasis on the fact (which is not in issue) that he had never taken part in the intercepted telephone conversations and submits that Roman Jatsinischyn had taken his name in vain and without his knowledge. In his appeal brief, the Appellant suggested that "*It's more likely, that Roman, one of the participants of the telephone conversations, used the name and personal relation with the Appellant, without his awareness and behind his back made a fraud trying to receive a profit*". The Panel observes, however, that this does not explain why, respectively on 4 and 5 November 2009, Mr Ante Sapina and Mr Marijo Cvrtak confirmed that they had met the Appellant.
61. The Appellant has to suggest that Mr Ante Sapina was lying every time he claimed to having met him and negotiated the terms and conditions of the manipulation of the match in Basel. However, the Appellant does not supply any possible motive for such a lie - why Mr Ante Sapina (and the other perpetrators) should wish falsely to implicate



the Appellant in the crime or what benefit would accrue to them for so doing. The Appellant did not establish as plausible the existence of a plot hatched against him by persons, whom he claims to have met for the first time only (approximately) a month after the match in Basel.

62. It must be noted that such an alleged conspiracy to defame the Appellant in this way would not only require the participation of most - if not all - the persons whose telephone was tapped, but would also be vain unless all those persons knew in advance that telephones would be tapped, indeed that their match fixing scheme would be discovered, by the police. Such a hypothetical scenario has only to be stated to be stigmatized as absurd.

#### The minutes of the meeting at UEFA headquarters on 30 November 2009

63. According to the minutes of the meeting at UEFA headquarters on 30 November 2009, the Appellant had been contacted before and after the match in Basel by persons who asked him to consider the possibility of manipulating matches. Regarding the content of the minutes, the Appellant signed the following declaration: *"The present record was read to me aloud in Russian language. I have understood it and deemed it accurate, to which I hereby attest with my signature."*
64. At the hearing before the CAS, as noted above, the Appellant asserted that he was convinced that the object of the meeting at the UEFA headquarters was related to his possible promotion to a higher referee category. He was therefore taken by surprise when the discussion turned to the subject of match fixing.
65. This explanation is wholly inconsistent with the e-mail exchange which took place between the Appellant and Mr Peter Limacher before the meeting, itself significantly identified in the initial summons as "urgent". Upon reception of his notification to appear at the UEFA headquarters, the Appellant immediately wondered if it was related to the cancellation of his appointment to officiate a match in Austria in December 2010. Furthermore, Mr Limacher confirmed unambiguously to the Appellant that he was contacted in relation with *"matters of integrity"* and specified that he wanted to hear him about *"some matches [he] refereed for UEFA"*, *"the dynamics involved prior and after the match, in particular with regard to certain individuals who might have contacted you"*. Finally, the disciplinary nature of the meeting should have been obvious to the Appellant as he was contacted by UEFA's Head of disciplinary services, i.e. Mr Peter Limacher.
66. In such a context, the Panel finds the Appellant's assertion that he came to the UEFA headquarters without knowing what would be discussed as utterly lacking in credibility.
67. The Appellant also told the Panel that the said meeting was divided in two sessions, one in the morning and another one in the afternoon. He claimed that he disagreed with the content of the minutes but accepted to sign them on the assumption that his remarks would be recorded. To his dismay, the content of the minutes remained unchanged and is therefore not reliable. The signature of the document allegedly happened at 16:30 despite the fact that he was still heard until 18:00.

68. The Appellant's version of the facts in terms of the timing is at odds with the minutes, according to which the meeting started at 9:30 and ended at 11:00. Moreover, it is not corroborated by the evidence given by the interpreters. As a matter of fact, the Panel found the testimonies of Ms Valeria Döhler and Mr Dimitri Boulakovski both credible and compelling as they were careful, clear and consistent. They did not say more than they could claim to remember and both affirmed that the Appellant's hearing went smoothly, lasted about an hour and there was no indication that he misunderstood what he was being asked.
69. The Panel finds the version of the facts presented by the Appellant unacceptable. Firstly, the Panel does not understand how the Appellant could sensibly have agreed to sign a document, the content of which he contested. Secondly, the Appellant has to suggest that he was deceived by two highly ranked delegates of the UEFA who either tricked or/coerced him into signing the minutes despite his dissent. Such a grave allegation would require cogent evidence (which is lacking) to be accepted, and is wholly at odds with the evidence of the interpreters. Thirdly, the minutes on their face refer to clarification by the Appellant (e.g. when the name of one of the accomplices was clarified) which implies that his corrections were indeed noted. Fourthly, and critically the facts recorded in the minutes and admissions made by the Appellant are consistent with all the other evidence submitted before the CAS, notably the telephone transcripts and Mr Ante Sapina's declarations before the Bochum Police.

### Conclusion

70. After careful analysis of the facts and based on the convergence of the various strands of evidence available, the Panel concludes that it has been proven not only to its comfortable satisfaction but indeed beyond reasonable doubt that there were repeated contacts between the Appellant and members of a criminal group involved in match fixing and betting fraud. The Panel finds that the transcripts of the telephone recordings made available by the criminal police of Bochum, Germany in conjunction with all the other evidence and testimonies are particularly incriminating as they establish a convincing connection between what was said during the intercepted calls, the events which took place around the match in Basel, the proven primary facts and the inferences properly to be drawn therefrom. It has been convincingly established that the Appellant was contacted before and after the match in Basel by persons who offered him monies to manipulate the result of the game. Hence, as a target of attempted bribery, the Appellant should have notified UEFA immediately.
71. The explanations of the Appellant for this admitted lack of contact, which were set out above, are not, in the Panel's view, at all impressive. Firstly, the assertion that the contact was too trivial to be reported is inconsistent not only with the objective evidence available but also with the fact that it is said at the same time to have caused him to fear for his family or for his career. Secondly, some kind of serious offer to manipulate matches must have been made to him as he declined it, "*stating that his career was too important to him*" (see minutes of the meeting at the UEFA headquarters, page 2, paragraph 2). The same kind of statement was repeatedly made by the Appellant in his various briefs before the UEFA disciplinary bodies.

72. The contention that he did not report the said contact because of his inadequate command of English and ignorance of to whom to make such a report must be rejected. A referee of the Appellant's experience and standing could not plausibly advance such excuses given the seriousness of the illicit act and of its consequences. The Panel finds that the Appellant was obliged to report the said contacts to UEFA and had the capacity (including linguistic skills) to do so; its own observations led it to conclude that he chose to underplay his command of English. By failing to make such a report, the Appellant deliberately violated the principles of conduct as set forth under Article 5 of the UEFA Disciplinary Regulations and the duties imposed upon him by article 6 of the UEFA General Terms Conditions for Referees.
73. It is accordingly not necessary for the Panel to make a final finding on whether or not the Appellant actually manipulated the match played in Basel on 5 November 2009 (whose result was in fact consonant with the expectations of the gamblers) or actually received any moneys for agreeing to manipulate it or for its manipulation (if any). The offences are made out in any event.

b) What is the correct sanction?

### ***In General***

74. Article 5 of the UEFA Disciplinary Regulations reads as follows where relevant:

#### ***“Article 8 Principles***

*1 Unsportsmanlike conduct, breaches of the Laws of the Game, as well as infringements of the statutes, regulations, decisions and directives of UEFA, are punished by means of disciplinary measures.(...)*

#### ***Article 11 Other offences***

*1 Disciplinary measures provided for in Articles 14 and 15 of the present regulations may be taken against member associations or clubs if:*

*a) a team, player, official or member is in breach of Article 5 of the present regulations;(...)*

#### ***Article 15 Disciplinary measures against individuals***

*1 The following disciplinary measures may be imposed against individuals in accordance with Article 54 of the UEFA Statutes:*

*a) warning,*

*b) reprimand,*

*c) fine,*

*d) suspension for a specified number of matches or for a specified or unspecified period,*

*e) suspension from carrying out a function for a specified number of matches or for a specified or unspecified period,*

*f) ban on exercising any football-related activity,*

*g) withdrawal of a title or award.*

**Article 17 General principles**

*1 The disciplinary body shall determine the type and extent of the disciplinary measures to be imposed, according to the objective and subjective elements, taking account of both aggravating and mitigating circumstances. Subject to Article 6 (1) of the present regulations, no disciplinary measures may be imposed in cases where the party charged bears no fault or negligence. "*

**In Casu**

75. The UEFA Appeals Body confirmed the life ban from any football related activities imposed upon the Appellant by the UEFA Control and Disciplinary Body.
76. The Appellant submits that in all the circumstances, his clean record, the fact that he was not the instigator of any plan to fix the match, the sanction imposed is by far too severe.
77. The Panel accepts that, until the recent events under scrutiny in this appeal, the Appellant's reputation was untarnished, his refereeing skills were well recognized and that he did not instigate the match manipulation. It also accepts that it should proceed on the basis that he did not actually manipulate the match or receive moneys to affect its outcome.
78. However, the Panel has to remind itself that match-fixing, money-laundering, kickbacks, extortion, bribery and the like are a growing concern, indeed a cancer, in many major sports, football included, and must be eradicated. The very essence of sport is that competition is fair; its attraction to spectators is the unpredictability of its outcome.
79. There are several pronouncements of CAS panels to that effect.
80. It is therefore essential in the Panel's view for sporting regulators to demonstrate zero-tolerance against all kinds of corruption and to impose sanctions sufficient to serve as an effective deterrent to people who might otherwise be tempted through greed or fear to consider involvement in such criminal activities. Match officials are an obvious target for those who wish to make illicit profit through gambling on match results (or indeed on the occurrence of incidents within matches). They must be reinforced in their resistance to such criminal approaches. CAS must, applying naturally to considerations of legality and of proportionality, respect in its awards the approaches of such regulators devoted to such virtuous ends.
81. To summarise, the Appellant was found involved in a match fixing scandal which occurred in a major European championship and which received an important media coverage. More than a year later, at the public hearing of Mr Tuna Akbulut on 10 December 2010, the media coverage was still intense as can be judged by the press abstracts presented on this subject. The Appellant's name was notably mentioned by the

press in connection with alleged attempted manipulation of the match played in Basel on 5 November 2009 in the Group Stage E of the 2009/2010 UEFA Europa League.

82. In view of the importance of the UEFA Europa League, of the level of this competition, and of the sporting and financial interests at stake, the highest standards of behaviour must be demanded of all the people involved - players, managers, coaches, officials. It is vital that the integrity of the sport is maintained. Given his experience as a senior referee, the Appellant should have been particularly sensitive of his obligations and role in preserving and promoting such integrity. By not disclosing these improper approaches, he lamentably failed not only to obey the relevant regulations in their letter and spirit, but indeed to display any common sense.
83. The whole match fixing scandal and in particular the allegation related to the manipulation of the match in Basel caused a great and widely publicized damage to the image of UEFA and of football in general, inevitably raising doubts about whether match results are properly the product of footballers' skills, or improperly the product of other illegal activities. In that context, the Appellant's mitigation is inadequate to displace the conclusions of three footballing bodies as to the appropriate penalty for his misconduct.
84. Based on all the above, the Panel finds that a life ban from any football related activities against the Appellant is a proportionate sanction and that the Appealed Decision must be upheld in its entirety, without any modification. This conclusion makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.
85. (...)

**ON THESE GROUNDS**

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Oleg Oriekhov against the decision issued by the UEFA Appeals Body on 18 May 2010 is dismissed.
2. The decision issued by the UEFA Appeals Body on 18 May 2010 is confirmed.
3. (...)

Done in Lausanne, 18 January 2011

**THE COURT OF ARBITRATION FOR SPORT**

President of the Panel  
**Michael Beloff**

**Denis Oswald**  
Arbitrator

**José Juan Pintó**  
Arbitrator

**Patrick Grandjean**  
Ad hoc Clerk